IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
and
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

C.M.A.No.1332 of 2000

D.Umashankar .. Appellant/Petitioner

versus

C.Kalpana .. Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 19 of the Family Court Act against the order dated 3.1.2000 made in F.C.O.P.No.2 of 1995 on the file of the I Additional Family Judge, Chennai.

For appellant : Mr.Venkatasubbaraju
for Mr.R.Vijayakumar
For respondent : Mrs.R.Vijaya

JUDGMENT

(Judgment of the Court was delivered by CHITRA VENKATARAMAN,J.)

This appeal is against the order of the I Additional Family Court Chennai. The petitioner is the appellant herein. The appellant herein, husband of the respondent herein, sought for dissolution of the marriage under Section 13(1)(ia) of the Hindu Marriage Act, 1955, on the ground of cruelty, or in the alternative, for judicial separation under Section 103 of the Hindu Marriage Act, 1955.

2. The appellant and the respondent got married on 29.8.1993 according to the Hindu rites and customs. The marriage was an arranged marriage. It is alleged that soon after the marriage, the respondent was behaving strangely and not as a newly wedded wife. It is alleged that even on the first night, the respondent was demanding the appellant to set up a separate residence and arrange for a cook. It is stated that the appellant left the respondent with her parents on 30.8.1993, since she had

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measles. She returned back and started living with the appellant from 16.9.1993 onwards. It is further stated that the respondent was employed in a Benefit Fund in Purasawalkam. She promised to resign her job, but it did not materialise. The allegation is that on 25.9.1993, the respondent, after attending to her job, did not return back home. On enquiry, it was learnt that she went to her mother's house and the father of the respondent came to the appellant's residence and demanded the sarees of the respondent on the ground that she was not willing to live with the appellant's family members and that she wished to live with the appellant only if and when a separate residence was set up. It is also alleged that the respondent's father abused the family members of the appellant. Thereafter, the appellant's family members went to the respondent's house on 25.9.1994 and attempted a mediation; however, it failed. In spite of an offer to set up separate residence to enable the respondent to come and stay with the appellant, the respondent refused and told the family members that she was not interested in living with the appellant. However, on persuasion, she returned back to the appellant's residence.

3. It is alleged that on 7.10.1993, the respondent misbehaved with the family members, and on the information given by the appellant's brother, the respondent's father came. The respondent and her father went on to the road and shouted at the appellant's family members. Even for the Thalai Deepavali, the appellant and his family members were not invited.

4. The appellant states that the respondent threatened that she and her family members would lodge a complaint before the Dowry Cell. The allegation is that after 7.10.1993, the respondent did not return back to her marital home; that he was not having mental peace and suffered mental breakdown. The conduct of the respondent showed that there was no possibility of the appellant leading a happy marital life with the respondent. In the circumstances, the appellant/petitioner sought for divorce on the ground of cruelty, or in the alternative, for judicial separation.

5. The appellant has sent a lawyer's notice, which was replied to, followed by a rejoinder from the appellant's Advocate.

6. The respondent filed a counter affidavit, wherein, she denied the allegations. She stated that she was employed in a Benefit Fund at Purasawalkam and it was agreed prior to the marriage that she would remain in employment for a month or so after the marriage till they moved to Arakkonam, where the appellant had quarters in the Indian Naval Air Station, Rajali, Arakkonam. She alleged that considering the number of family members and the size of the house and that the maternal aunt of the appellant was occupying a portion, there was no privacy to the newly married couple. She stated that there was no space to sit comfortably to enjoy the company of her husband. She alleged that the appellant asked her to resign her job and stated that unless she resigned her job, he

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would not take her to Arakkonam. Hence, with a hope that the appellant would set up a family at Arakkonam, she resigned her job. She also alleged that she also did not have even sufficient rest and peace during her stay in her husband's house. When the respondent requested the appellant to take her to Arakkonam, she was informed that he had surrendered his quarters at Arakkonam and hence, could not take her to Arakkonam. It is stated by the respondent that she had been requesting the appellant to move to a better place, only for the purposes of having a comfortable living, that she never had the intention of staying away from the other members of the family. She submitted that she never requested the appellant to set up a separate family away from the family members. It is stated that she asked for a better accommodation and privacy to have a healthy marital life and that she never had any animosity over the family members. She also stated that she is an Arts Graduate and she has finished her post graduation also. She has passed higher typing both in English and Tamil and that she has passed Diploma in Computer Programming. She has also passed Shorthand English lower grade, apart from qualification in Hindi.

7. She stated that her father had spent substantially for her marriage by giving gifts. She alleged that but for the assurance given by the appellant that they would be moving to Arakkonam, she would not have insisted him to shift to Arakkonam or resigned her job. She denied the allegations in the petition as regards her father's conduct and states that he never abused the appellant's mother or sister; that the allegations on the behaviour of the respondent were wholly fictitious and invented to suit the occasion. She also stated that only for the maintenance of a good marital life,she called on the appellant at his office at Arakkonam and incidentally met the Principal. In short, all that the respondent wanted was only a separate residence for a separate living. She has narrated in the counter affidavit that the appellant had rented out many of the portions and that by evicting anyone of the tenants, there would be better accommodation. She stated that in spite of such a course open, nothing was done by the appellant. She denied the allegation that she told the appellant that she was not ready to live with the appellant and to render conjugal assistance. She denied the statement of the appellant and expressed her willingness to join the appellant. She stated that the respondent and the appellant fell in love with each other, which ultimately ended in an arranged marriage and that they are related too. She alleged that the appellant's unmarried sister and cousin sister and the appellant's brother, aged about 26 years, stand in the way of the appellant and the respondent living a happy marital life. Hence, the respondent prayed for dismissal of the petition.

8. The Court below went into the evidence. The appellant/petitioner was examined as P.W.1 and the respondent was examined as R.W.1. Apart from the parties herein, other eye-witnesses were also examined, apart from marking the documents.

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9. The Court below noted that the appellant herein had not proved his case on the act of cruelty. In this connection, the Court below referred to the evidence of P.W.1, the appellant herein, and pointed out that all that the respondent demanded was a better residence rather than a separate residence to stay away from the parents and stay with the respondent. The Court below further noted that the respondent had expressed her eagerness to join the appellant and had also written several letters requesting him to take her back. The Court below further noted the evidence of R.W.1 in paragraph 28 only go to show that she had taken efforts to meet the appellant and talk freely. R.W.3, the respondent's employer, deposed that the respondent tendered her resignation, since she wanted to join her husband to live in Arakkonam. The Court below found that the appellant had not stated clearly as to why he had not shifted the residence to Arakkonam, as agreed prior to and after the marriage. The Court below also rejected the plea that the marriage was not consummated. Referring to the evidence of P.W.4, the Court below held that the parties herein lived as husband and wife for more than two months. The Court below further noted that although the appellant had alleged that the respondent behaved badly with his family members, no evidence was let in to prove the same by the appellant. The Court below also rejected the evidence of P.W.3, maternal uncle of the appellant, since P.W.3's evidence did not show categorically as to whatever had been alleged to have happened in the appellant's house. The evidence of P.W.3 being an interested testimony was not not given credence to. The Court below further pointed out that surprisingly, the appellant had not examined any of the tenants residing in the same premises to substantiate the allegations as to the conduct of the respondent. The Court below pointed out the contradictions in the evidence of P.Ws.1, 3 and 4 as regards the allegation of abuse by the respondent and her father. The Court below further pointed out from the evidence of the respondent that there was no allegation of ill-treatment or cruelty from the appellant and that her only regret was that as assured by the husband, he had not taken her to the quarters. She further deposed that in spite of her forceful entry, she was thrown out by the appellant with the assistance of the tenants and that she was not allowed to stay in her matrimonial residence on the sole ground that a separate room had to be given to the appellant and the respondent. Quoting from the evidence of the respondent, the Court below came to the conclusion as a matter of fact that the respondent was always ready and willing to live with her husband, the appellant herein. In fact, in Ex.R3, in reply to the notice, the respondent had expressed her willingness to join the appellant and that she requested the counsel to advise the appellant to take the respondent from her house to return to her matrimonial house and that she was waiting for his arrival. The Court below also found that the allegation of rude behaviour from the respondent's father was not proved by any evidence. The Court below held that the demand by the respondent for a separate room at night was genuine and true. Referring to the evidence given and allegation not thus proved, the Court below came to the conclusion that the appellant had not made out a case on the allegation of cruelty to grant the prayer for divorce and consequently, the petition

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under Section 13(1)(ia) of the Hindu Marriage Act was rejected. As regards the prayer under Section 10 of the Hindu Marriage Act for judicial separation, the Court below noted that the effect of Section 10 was merely a suspension of active marital life. When the appellant had not proved his case on the allegation of cruelty and when the respondent had expressed her willingness to join the appellant any time, the Court below rejected the prayer as totally misconceived. Thus, the alternative prayer was also dismissed.

10. Aggrieved of these, the appellant has come on appeal before this Court, contending that the Court below erred in not properly adverting to the allegation on torture and cruelty by the respondent herein. He also questioned the conduct of the respondent in insisting on the appellant to move to Arakkonam to set up a residence, which the Court below had wrongly inferred as one with good intention of the respondent to live with her husband. He submitted that the decision of the Court was on mere conjectures and surmises. He impressed on the misbehaviour of the respondent and her father. He also stated that it was not possible for the appellant herein to set up a separate family, and knowing the fact that there was no place, the respondent constantly insisted to have a separate residence. In the circumstances, he prayed for reversing the order of the Court below and to grant the prayer for divorce.

11. We do not agree with the submission made by the learned counsel for the appellant herein. A perusal of the documents filed before the Court below clearly show that right from the beginning, namely, from the stage of reply to the notice, the respondent had expressed her willingness to join her husband and that her only grievance was that there was not enough space in the house to have privacy. In her evidence, she had stated clearly that she had no animosity towards anybody in her husband's house. She also admitted that there was no cruelty from her husband or from other members of his family and that her only grievance was that she was not taken to the quarters. She also admitted that he was kind to her. She also stated that when she visited the appellant's house on 7.10.1993 to attend the Navarathiri Kolu, she was informed that they would make necessary arrangement to build a separate room and arrange for privacy, and when she returned on 17.10.1993, she was not allowed to enter in, primarily for the reason that should she enter the house, she would insist on a comfortable stay there to assure privacy by providing a room. A perusal of the evidence of the respondent show that she was very categorical in her statement as regards her willingness to join her husband. On the other hand, the refusal to take her back was only from her husband. To quote the evidence:

> @ ரூம் நாங்கள் கேட்டதினால் தான் தகராறு ஏற்பட்டது. ரூம் கட்டிக்கொடுத்தால் தான் வருவேன், இல்லாவிட்டால் நான் வரமாட்டேன் என்று நான் சொல்லவில்லை. நூறு முறை போனாலும் நூறு முறையும் துரத்திவிட்டார்கள். நான் உள்ளே தான் இருப்பேன் என்று பலாத்காரமாக

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முயற்சி எடுத்தேன். வாடகைதாரர் என்னை வெளியே தூக்கி போட்டுவிட்டார். "

12. Considering the willingness expressed by the respondent to live with the appellant herein even at the time of giving evidence before the Court, we do not find any merit in the submission made by the appellant herein. On the other hand, the evidence of P.W.1, the appellant herein, leads one nowhere on the allegation of cruelty. He did not deny in evidence that there were tenants in the house. He denied that the respondent and her parents met the Principal and others who were working along with the appellant herein. It may be noted that except for the allegations in the petition, the evidence let in did not substantiate any one of them, including the one on cruelty. There are absolutely no materials to support the case of the appellant herein. As rightly found by the Court below, P.W.3 is none else than the uncle of the appellant herein. He stated that since the respondent stayed in her parents' house, they did not do anything. Considering the fact that the evidence of P.W.1, or for that matter even the evidence of P.Ws.2, 3 and 4, contain nothing to substantiate even to a small degree the allegations on cruelty or on the question of desertion, we do not find any merit in the appeal to disturb the order of the Court below. The evidence of P.W.1 is very categorical in her desire and willingness to join her husband. In the circumstances, we reject the plea of the appellant herein and thereby confirm the order of the Court below.

13. It is seen that during the pendency of the appeal, the matter was referred to the Tamil Nadu Mediation and Conciliation Centre to have an amicable settlement in this family matter. Considering the fact that both the parties could not arrive at a settlement, the Tamil Nadu Mediation and Conciliation Centre, sent the matter back to this Court for a decision. In the light of these facts noted above, we do not find any reason to accept the contentions of the appellant herein. Accordingly, the appeal stands dismissed. There will, however, be no order as to costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To:

1. The Presiding Officer,
Family Court, Chennai.

2. The Section Officer,
E.R.Section, High Court,
Madras.

1 cc To M/s.R.Vijaya, Advocate, SR.18372.

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